IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 8738 of 2005(M)

OS.390/2003 OF MUSNIFF COURT,ADOOR
.....

PETITIONERS:
----

1. **FR.T.G.MATHEWS, S/O.GEORGE,**
   PALLIVATHUKKAL THAZHETHIL VEEDU,
   KADAMPANAD NORTH MURI, KADAMPANAD VILLAGE.

2. **T.G.VARGHESE, S/O.GEORGE,**
   PALLIVATHUKKAL THAZHETHIL VEEDU,
   KADAMPANAD NORTH MURI, KADAMPANAD VILLAGE.

BY ADV. SRI.ABRAHAM VAKKANAL,
SRI.SAJI KURIACHAN,
SRI.M.R.NANDAKUMAR,
SRI.PAUL ABRAHAM VAKKANAL,
SMT.MERIN THALIATH.

RESPONDENTS:
----

1. **ST. THOMAS ORTHODOX CATHEDRAL,**
   KADAMPANAD, REP. BY ITS PRESENT VICAR FR.MATHEWS,
   THATTARUTHUNDIL, PARASONAGE,
   ST. THOMAS ORTHODOX CATHEDRAL, KADAMPANAD.

2. **ST. THOMAS ORTHODOX CATHEDRAL,**
   KADAMPANAD, REP. BY ITS PRESENT TRUSTEE
   K.Y. VARGHESE, S/O.YOHANNAN, KOTTINATTU,
   MALAYIL VEEDU, KADAMPANAD NORTH MURI,
   KADAMPANAD VILLAGE.

3. **M.GEORGE, NADASSALIKKAL,**
   S/O.MATHAI, THADASHALLIKKAL BUNGLOW,
   KADAMPANAD NORTH MURI, KADAMPANAD VILLAGE.

W.P.(C). NO.8738/2005-M:

4. PAPPACHAN KUTTY, BIJU BHAVAN,
KADAMPANAD NORTH MURI,
KADAMPAAND VILLAGE.

R1 & R2 BY ADV. SRI.M.NARENDRA KUMAR,
R4 BY ADV. SMT.MARY BENJEMIN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.8738/2005-M:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PLAINT IN O.S. 390/03. DTD. 15/09/03.

EXT.P.2: COPY OF THE I.A. 2464/04 DTD. NIL.

EXT.P.3: COPY OF THE OBJECTION FILED BY DEFENDANTS 1 TO 3 DTD. 04/12/04.

EXT.P.4: COPY OF THE OBJECTION FILED BY 4TH DEFENDANT DTD. 20/12/04.

EXT.P.5: COPY OF THE COMMISSIONERS REPORT IN O.S. 390/03 DTD. 22/09/03.

EXT.P.6: COPY OF THE AFFIDAVIT BY THE FORMER PANCHAYAT VICE PRESIDENT DTD. 14/03/05.

EXT.P.7: COPY OF THE ORDER IN I.A. 2464/04 IN O.S. 390/03 ON THE FILE OF THE MUNSIFF COURT, ADOOR DTD. 14/01/05.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 8738 of 2005

Dated this the 5th day of July , 2007

JUDGMENT

Under challenge in this Writ Petition under Article 227 of the Constitution initiated by the plaintiffs in O.S.No.390 of 2003 on the files of the Munsiff's Court, Adoor is Ext.P7 order of the learned Munsiff dismissing an application filed by them for amendment of the plaint. The 1st respondent-1st defendant is the St.Thomas Orthodox Cathedral, Kadampanad represented by its Vicar and the 2nd respondent-2nd defendant is the same Cathedral represented by its Trustee. The 3rd respondent-3rd defendant is one M.George, ex-officio member of the Cathedral and the 4th respondent-4th defendant is one Pappachan Kutty. The suit was for a mandatory and prohibitory injunction restraining the 4th defendant-4th respondent from demolishing tomb No.336 in the cemetery of the 1st respondent-Church wherein, according to the petitioners, the dead body of their mother was buried. The petitioners stated in the plaint Ext.P1 that the dead body of the grandmother of the 4th defendant has been buried in tomb No.335, situated on the southern side of tomb No.336. It was alleged

that the 4th defendant demolished tomb No.336 on the reason of constructing a family tomb with the permission of respondents 1 to 3, the Church authorities.

2. In the affidavit in support of the amendment application, the petitioners stated that details regarding the date of death and date of burial of the grandmother were incorporated in Ext.P1 plaint on the basis of information furnished to them by the 1st respondent. It is stated in Ext.P1 that the grandmother of the 4th respondent died on 2.6.1985 and was buried on 3.6.1985. Later, on perusal of the Burial Register produced by the 1st respondent before the court, it was seen that the relevant dates shown in the Register were different from what has been stated in Ext.P1 plaint. As per the Burial Register, the grandmother of the 4th respondent-4th defendant died on 19.5.1981 and was buried on the same day. On perusing the Burial Register only, the petitioners could understand that the information which had been furnished to them earlier by the authorities of the Church is wrong and that the grandmother of the 4th respondent died on 19.5.1981 and was burried on 19.5.1981. Hence this application for amendment. The application was resisted by respondents 1 to 3 and by the 4th respondent by filing separate objections. The court below, after noticing the averments and the contentions ,found that there

is no averment in respect of tomb No.335 in the register and the 4th respondent has no relation to Aleyamma, Kalluvilayil and also that the correct name of the mother of the 4th respondent is Alia. Tomb No.336 is tomb of Aliya, Charuvilayil Veedu, date of death was on 2.6.1985 and burried on 3.6.1985 and not on 19.5.1981 as alleged in the petitioners. There is no such document to prove that the body of the grandmother of the 4th respondent was burried in tomb No.335 as alleged in the petition. In other words, the court below has gone into the correctness of the averments in the application and proceeded to dismiss the amendment application.

3. I have heard the submissions of Sri. Paul Abraham Vakkanal, the learned counsel for the petitioners, Sri.M.Narendrakumar the learned counsel for the respondents 1 and 2 and smt.Mary Benjamin the learned counsel for the 4th respondent. The learned counsel addressed me extensively on the grounds raised in the writ petition/in support of the impugned order. My attention was drawn by Sri.Paul Abraham Vakanal to various judicial precedents governing exercise of power to amend pleadings.

4. Having considered the rival submissions, I am of the view that the court below has not kept in mind the principles governing exercise of powers to amend pleadings in civil cases. According to me, the

application could have been allowed by the court below by imposing reasonable terms and by ensuring that no legal prejudice will be occasioned to the respondents by allowing the amendment.

5. The result of the above discussion is that the writ petition and the I.A. for amendment will stand allowed by payment of cost of Rs.2,000/- each to the 4th respondent and 1st respondent church. The court below will allow the I.A. giving an opportunity to respondents 1 and 4 to file additional written statement. It is made clear that this judgment will not enable the petitioners to get away from the fatal admissions, if any, made in the original plaint. Payment shall be made within one month. Payment can be made either directly to respondents 1 and 4 or through their counsel appearing before this court. If payment of cost is not made, the impugned order will stand confirmed.

The writ petition is allowed to the above extent.

(PIUS C.KURIAKOSE, JUDGE)

tgl/dpk